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No. 1298

In the

Supreme Court of the United States

OCTOBER TERM, 1967.

ATHENA CIELEN,

Petitioner,

vs.

AETNA LIFE INSURANCE COMPANY, a Corporation, and THE TRAVELERS INSURANCE COMPANY, a Corporation,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT

This is an Illinois state court suit seeking double indemnity benefits under two life insurance policies. After trial, the jury returned a verdict for the respondent insurance companies. On appeal, the intermediate appellate court affirmed; the court held that plaintiff had adduced no evidence whatsoever to prove "accidental bodily injuries which were the direct and independent cause of death," as required by the policies. Since petitioner had the burden to make at least a prima facie showing on this issue and failed to do so, the appellate court stated that respondents would have been entitled to a judgment as

a matter of law, even if the jury had not held in their favor.

The Illinois Supreme Court denied a petition for leave to appeal and a motion for reconsideration of that denial.

Petitioner now seeks certiorari to review the appellate court's judgment.

REASONS FOR DENYING THE WRIT

I. THE FEDERAL QUESTIONS WERE NOT RAISED BELOW.

At no stage of the lower court proceedings did the petitioner raise any of the three constitutional questions purportedly presented in the petition. The questions were not raised in either the trial court or the appellate court; nor did petitioner raise the questions in her petition for leave to appeal to the Illinois Supreme Court, or in her motion for reconsideration of the denial of such petition. There is accordingly nothing here for this Court to review.

Rule 23(f) requires the petitioner to specify the stages of the lower court proceedings in which the federal questions were raised, the manner and method in which they were raised, and the way in which they were passed upon by the lower courts. The petitioner here does not (and cannot) make any attempt to comply with the Rule. The petition should accordingly be denied.

II. THE PETITION IS NOT CERT-WORTHY.

Even if petitioner's "questions presented" had been raised and decided below, there would be no warrant whatever for review by this Court. The decision below is clearly correct; it holds only that petitioner failed to meet her well-settled burden to make a prima facie show-

ing that the death of the insured was the result of accidental bodily injury. Accord: *Fidelity & Casualty Co. of New York* v. *Weise*, 182 Ill. 496, 500 (1899); *Wellner* v. *New York Life Insurance Co.*, 331 Ill. App. 360, 364 (1947); *Smith* v. *Metropolitan Life Insurance Co.*, 317 Ill. App. 624, 629 (1943); 46 C.J.S., Insurance, Sec. 1319(c), pg. 443. There is no conflict of decisions; the case has no far-reaching implications; and there are no special or important reasons for review by this Court.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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